

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

SERGIO OMAR FLORES,

Petitioner,

v.

No. 2:10-CR-039-J

THE UNITED STATES OF AMERICA

Respondent.

**GOVERNMENT’S RESPONSE TO PETITIONER’S
“MOTION FOR VOID JUDGEMENT . . .”**

The United States of America, by and through the United States Attorney for the Northern District of Texas, files this response to Petitioner’s “Motion for Void Judgement . . .” and asks that said motion be denied.

In his motion, Flores plainly states that he is moving for his sentence to be corrected “pursuant to Rule 60(b),” and that his “motion should not be construed as a writ of habeas corpus pursuant to Title 28 U.S.C. § 2255, or any other motion.” Petitioner’s motion is easily resolved against him as “Rule 60(b)” is a Federal Rule of Civil Procedure that does not apply to criminal cases. *See United States v. O’Keefe*, 169 F.3d 281, 289 (5th Cir. 1999). As such, Petitioner’s Motion should be denied.

Additionally, his motion should not be construed as one made under 28 U.S.C. § 2255 for two reasons:

(1) Flores specifically said in his motion it should not be construed as a 2255 motion; and

(2) He has already filed a 2255 motion in this case in this Court (2:11-CV-247-J) which was denied, and he has stated no grounds on which he is entitled to a successive 2255 motion. *See* 28 U.S.C. § 2255(h).

The Government respectfully requests that Flores’ “Motion for Void Judgment . . .” be denied.

JOHN R. PARKER
UNITED STATES ATTORNEY

/s/ Denise Williams
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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was served by United States Mail on November 26, 2016, on Sergio Omar Flores, Register No. 41063-177, FCI Coleman Medium, P.O. Box 1032, Coleman, FL 33521.

/s/ Denise Williams
DENISE WILLIAMS
Assistant United States Attorney